

**Serial No. 57**  
**Reg. Cause List**

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT KASHMIR**

Bail App 49/2025

**Asif Iqbal Wani**

.... Petitioner/Appellant(s)

Through: Mr. Shafqat Nazir, Advocate

Vs.

**Union Territory Through  
SHO PS Kothibagh**

.... Respondent(s)

Through: Ms. Nadiya Abdullah, Assisting Counsel vice  
Mr. Mohsin Qadri, Sr. AAG/

**CORAM:**

**HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE**

**ORDER**

30.09.2025

1. Through the medium of the instant petition filed under the provision of Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as the 'BNSS' for short), the petitioner/accused has sought the grant of pre-arrest bail in his favour in case FIR No. 16/2025 registered under Section 308(6) of BNS with the Police Station Kothibagh Srinagar, on the grounds that he is a peace loving citizen of India and a domicile of UT of Jammu and Kashmir who has not committed the alleged offence. That he is working as a selection grade Constable in the J&K Police and has never involved himself in any illegal activity being himself concerned with the maintenance of law and order and prevention of crime in the society. That on account of his meritorious and exemplary services, he was awarded a commendation medal as also a certificate by the Director General of Police, J&K on 31.12.2022. That he, as on date, has 25 years of commendable service at his credit. That he had some dispute with one Rameez Ahmad- cousin brother of the complainant as regards the purchase of a mobile phone. That he, upon asking the said Rameez Ahmad either to return the sale

price of the mobile to him or in the alternative supply him brand new mobile (iPhone 16 Pro) to avoid any legal action. That in response the said Rameez Ahmad persuaded the complainant Sheikh Shahnawaz Ahmad being his cousin brother to approach the respondent-Police Station with a false and fictitious complaint against him which led to the registration of the case FIR No. 16/2025 under Section 308(6) BNS against him. That apprehending his arrest in the said case FIR, he filed a bail application in terms of provisions of Section 482 BNSS before the Court of learned Principal Sessions Judge, Srinagar, on 09.04.2025, which came to be assigned for disposal under law to the Court of learned Additioinal Sessions Jude, Srinagar. That the learned Court initially passed the interim pre-arrest bail order in his favour dated 09.04.2025, but subsequently disposed of the application vide order dated 15.04.2025 asking him to appear before the learned Chief Judicial Magistrate, Srinagar, within two days seeking the regular bail under the relevant provisions of the law. That the allegations as per the FIR even if taken on the face value do not *prima facie* constitute any offence or make out a case against him. That the basic ingredients of the offence as defined and punishable under Section 308(6) BNS are not made out even from literal reading of the complaint/FIR. That the learned Additional Sessions Judge was not justified under law to direct him to approach the learned Chief Judicial Magistrate for seeking regular bail, as the same is against the spirit of the law regarding “pre-arrest bail” as interpreted by the Hon’ble Apex Court in its latest judgments. That the learned Additional Sessions Judge, Srinagar, while disposing of the bail application without granting him the absolute relief came to be swayed by the alleged seriousness of the offence against him, which is not punishable with death or imprisonment for life and, as such, there was no bar for enlarging him on pre-arrest bail. That there is no need of his custodial interrogation in the case in view of the facts and circumstances of the case. That his fundamental right to liberty stands curtailed by the rejection of bail by the learned Additional Sessions Judge, Srinagar. That

it is a cardinal principle of the criminal jurisprudence that an accused is presumed to be innocent till proved guilty and the onus of proving everything essential to the establishment of guilt lies on the prosecution. That he shall abide by any conditions that may be imposed by this Court in case of his pre-arrest bail.

2. The respondent No. 1/State filed its objections to the instant application and resisted it on the grounds that petitioner/accused has committed heinous and non-bailable offence punishable under Section 308 (6) BNS by misusing his position as an employee of the Police Department. That petitioner/accused, if enlarged on bail, is likely to threaten the prosecution witnesses. That the pre-arrest enlargement of the petitioner/accused is likely to encourage him for repetition of similar kinds of offences. That the Investigating Officer during investigation of the case has collected sufficient evidence establishing the involvement of the petitioner. That having regard to the nature of the evidence and the heinousness of the crime committed by the applicant/petitioner by misuse of his position, the application deserves to be disallowed.

3. I have heard the learned counsel for the parties and considered their rival submissions.

4. It is submitted by the learned counsel for the petitioner/accused that the investigation in the case has already been finalized with the presentation of the final report/challan before the competent court.

5. This court vice order dated 21.04.2025 has already admitted the petitioner/accused to interim pre-arrest bail subject to some terms and conditions. The said order was extended and is deemed to be in force.

6. Keeping in view the perusal of the instant application, the memo of objections filed by the respondent No. 1, copies of the orders dated 09.04.2025 and 15.04.2025 of the learned Additional Sessions Judge, Srinagar and the consideration of the rival arguments advanced on both the sides, in the light of the law on the subject, this Court is of the opinion that it may meet the ends of justice in case the application is allowed and the petitioner/accused is admitted to pre-arrest bail in

absolute in case FIR No. 16/2025 under Section 308(6) BNS registered with Police Station Kothibagh Srinagar, subject to some reasonable terms and conditions.

7. The Hon'ble Apex Court in its Judgments cited as Siddharam Satlingappa Mhetre Vs. State of Maharashtra decided on 02/12/2010, AIR 2011 SC 312 and Sushila Aggarwal and others vs. State (NCT of Delhi) and Another decided on January 29, 2020 by a larger bench 2020 SC online 98, has interpreted law on the subject of anticipatory bail with a very wide outlook and while interpreting the concept of liberty guaranteed under Article 21 of the Constitution of our country in a flexible and broader sense. The Hon'ble Apex Court has admittedly in the Judgments held the earlier law on the subject laid down in Chain Lal vs. State of Madhya Pradesh (1976) 4 SCC 572; Salau-ud-din Abdul Samad Heikh vs. State of Maharashtra AIR 1996 SC 1042; K. L. Verma vs. state and another 1996 (7) SCALE 20; Sunita Devi vs. State of Bihar and another AIR @))% SC 498; 2005 AIR (Criminal) 112; AdriDharan Das vs. state of West Bengal AIR 2005 SC 1057 and Naresh Kumar Yadoo vs. Ravinder Kumar and others 2008 AIR (SC 218) decided on 23rd October 2007, as per incuriam.

8. It was held by the Apex Court in Siddharam Satlingappa Mhetre Vs. State of Maharashtra decided on 02/12/2010, AIR 2011 SC 312 that purpose of Anticipatory Bail is to uphold cardinal principle of criminal jurisprudence that an accused person is presumed to be innocent till he is proved to be guilty and that section 438 need not be invoked only in exceptional or rare cases. Discretion must be exercised on the basis of available material and facts of particular case. **It has also been held in the said case that anticipatory bail cannot be granted for a limited period. Accused released on anticipatory bail cannot be compelled to surrender before trial court and again apply for regular bail. It is contrary to the spirit of section 438 and also amounts to deprivation of his/her personal liberty. Ordinarily, benefit of grant of anticipatory bail should continue till end of trial of that case unless**

**bail is cancelled on fresh circumstances.** That grant or refusal of bail should necessarily depend on facts and circumstances of each case.

9. The following factors and parameters have been laid down for consideration while dealing with anticipatory bail:

- “a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*
- b) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;*
- c) The possibility of the applicant to flee from justice;*
- d) The possibility of the accused’s likelihood to repeat similar or the other offences.*
- e) Whether the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;*
- f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;*
- g) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of section 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;*
- h) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;*
- i) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*
- j) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution in the normal course of events, the accused is entitled to an order of bail.”*

10. It is profitable to reproduce a relevant complex extract from the said judgment as under:-

**“....The inner urge for freedom is a natural phenomenon of every human being. Respect for life and property is not merely a norm or a policy of the state but an essential requirement of any civilized society. Just as the liberty is precious to an individual, so is the society’s interest in maintenance of peace, law and order.” “A great ignominy, humiliation and disgrace is attached to the arrest. In case, the state considers some suggestions laid down by the Apex Court, it may not be necessary to curtail the personal liberty of the accused in a routine manner. As reported by and large nearly 60% of the arrests are either unnecessary or unjustified. As held, the arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that**

case. Similarly, the discretion vested with the court under section 438 Cr.P.C. should be exercised with caution and prudence. It is imperative to sensitize judicial officers, police officers and investigating officers so that they can properly comprehend the importance of personal liberty viz-a-viz social interests. Once the anticipatory bail is granted then the protection should ordinarily be available till the end of the trial.”

11. In the recent judgment of *Sushila Aggarwal and others vs. State (NCT of Delhi)* and another decided on 29, January 2020 a larger bench of Hon’ble Apex Court was pleased to inter-alia lay down the following guiding principles for consideration of the pre-arrest bail applications by the Courts:

(i) Nothing in Section 438 Cr. P.C. compels or obliges courts to impose conditions limiting relief in terms of time, or upon filing of FIR, or recording of statement of any witness, by the police, during investigation or inquiry, etc. While considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc. The courts would be justified and ought to impose conditions spelt out in Section 437 (3), Cr. PC [by virtue of Section 438.

(ii) The need to impose other restrictive conditions, would have to be judged on a case by case basis, and depending upon the materials produced by the state or the investigating agency. Such special or other restrictive conditions may be imposed if the case or cases warrant, but should not be imposed in a routine manner, in all cases. Likewise, conditions which limit the grant of anticipatory bail may be granted, if they are required in the facts of any case or cases; however, such limiting conditions may not be invariably imposed.

(iii) Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.

(iv) Anticipatory bail granted can, depending on the conduct and behaviour of the accused, continue after filing of the charge sheet till end of trial. An order of anticipatory bail should not be blanket in the sense that it should not enable the accused to commit further offences and claim relief of indefinite protection from arrest. It should be confined to the offence or incident, for which apprehension of arrest is sought,

**in relation to a specific incident. It cannot operate in respect of a future incident that involves commission of an offence.**

**(v) An order of anticipatory bail does not in any manner limit or restrict the rights or duties of the police or investigating agency, to investigate into the charges against the person who seeks and is granted pre-arrest bail.**

12. I am also supplemented in my opinion with an earlier authoritative judgment of the Hon'ble Apex Court cited as Lal Kamlandra Pratap Singh vs. State of UP (2009) 4 SCC 437 in which the unnecessary arrests have been strongly condemned being violative of the right to liberty.

13. The Court of learned Additional Sessions Judge, Srinagar, does not seem to be justified under law by directing the petitioner/accused to approach the Court of learned Chief Judicial Magistrate, Srinagar, for seeking the regular bail within two days in view of the afore-referred judgments of the Hon'ble Apex Court. Since the final police report/challan is reported to have been already presented before the competent Court for trial, as such there appears to be no need for keeping the petitioner in custody pending trial. The offence under Section 308(6) alleged against the petitioner/accused does not attract the bar in terms of the provisions of Section 480(1) of BNSS.

14. Although the final police report/challan has been presented before the competent Court for trial, yet the petitioner cannot be directed to seek regular bail from the learned Trial Court as the same shall defeat the purpose of doctrine of pre-arrest bail covered under the provisions of Section 482 of BNSS in view of the authoritative interpretations of the concept of the "pre-arrest bail" by the Hon'ble Apex Court especially in cases titled "*Siddharam Satlingappa Mhetre Vs. State of Maharashtra & Ors.*" AIR 2011 SC 312 and "*Susheela Aggarwal & Ors. Vs. State (NCT) Delhi & Anr.*" decided on 29<sup>th</sup> January, 2020. Since the trial in the case has already commenced, as such, it is obvious that there is no need for the petitioner's custody. The offences under the FIR in question do not attract the bar under the provisions of Section 480 of the BNSS corresponding to Section 437 of the Cr.P.C. (repealed)

15. Accordingly, the application is allowed and the petitioner/accused is admitted to pre-arrest bail in absolute in the case FIR No. 16/2025 for the offence under Section 308(6) of Police Station Kothibagh, Srinagar. The surety and personal bonds already furnished by the petitioner/accused pursuant to the interim pre-arrest bail order dated 09.04.2025 of this Court shall remain intact and valid pending trial of the case. However, the petitioner/accused shall remain punctual at the trial and shall not directly or indirectly make any inducement, threat or promise to any prosecution witnesses so as to dissuade them from making their factual accounts in respect of the case before the trial Court. The petitioner shall not repeat the commission of any crime.

16. *Disposed of.*

**(MOHD YOUSUF WANI)**  
**JUDGE**

SRINAGAR  
30.09.2025  
Shahid

Whether the order is speaking: Yes  
Whether the order is reportable: Yes